

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS

ALBANY, NY 12231-0001

FILING RECEIPT

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ENTITY NAME: V. MODELS CORP.

DOCUMENT TYPE: DISSOLUTION (DOMESTIC)

COUNTY: KING

SERVICE COMPANY: ** NO SERVICE COMPANY **

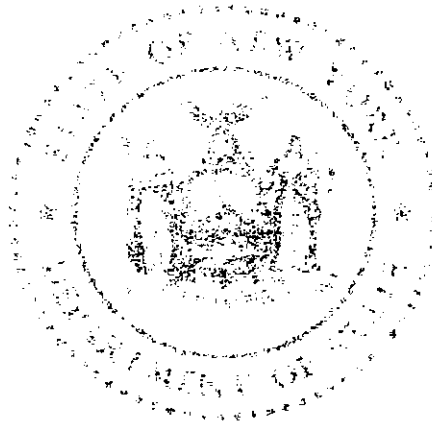
SERVICE CODE: 00

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FILED:08/15/2005 DURATION:***** CASH#:050815000642 FILM #:050815000655

ADDRESS FOR PROCESS

REGISTERED AGENT



FILER	FEES		PAYMENTS	
-----	-----	60.00	-----	60.00
ANATOLY OSADCHY CPA	FILING	60.00	CASH	0.00
3173 SHORE PARKWAY	TAX	0.00	CHECK	60.00
BROOKLYN, NY 11235	CERT	0.00	CHARGE	0.00
	COPIES	0.00	DRAWDOWN	0.00
	HANDLING	0.00	OPAL	0.00
			REFUND	0.00

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DOS-1025 (11/89)

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VNY MODEL MANAGEMENT, LLC.**MODEL MANAGEMENT AGREEMENT**

AGREEMENT made as of the 19 day of June, 2008, by and between VNY MODEL MANAGEMENT, LLC., 928 Broadway, Suite 801, New York, NY 10010 ("Manager"), and Soldan Richards, Inc ("Model").

WITNESSETH:

IN CONSIDERATION of the sum of One Dollar (\$1.00), each to the other paid in hand and the mutual covenants and promises herein contained, the parties hereto agree as follows:

1. Model hereby engages the services of Manager as Model's sole and exclusive manager, representative and advisor throughout the world with respect to Model's professional career, talents, services and business affairs in the fashion, modeling and entertainment industries ("Career"). Manager hereby accepts such engagement, and agrees to counsel, confer and advise Model in the guidance of Model's career and activities; to use reasonable efforts to arrange for, exploit and commercialize Model's name, talent and abilities in connection therewith; supervise, negotiate and arrange the terms of any and all offers of employment or contracts for services of any nature whatsoever. Manager agrees to render advice and assistance with respect to the development and improvement of Model's Career and all business interest related thereto.

2. (A) Manager is not and shall not act as an agent for Model. Model shall promptly refer to Manager all offers, communications or requests for Model's appearances or services.

(B) Manager shall not be required to render services exclusively to Model, and shall, at all times, be free to perform the same or similar services for others, as well as engage in any and all other business activities.


3. The term of this Agreement (the "Term") shall consist of an initial period plus any and all option periods. The initial period of this Agreement shall be two (2) years commencing on the date first above written and ending on June, 2008 (the "Initial Period"). The Term shall be automatically extended for additional periods of two (2) years each (collectively, "Option Periods"), unless Manager notifies Model, in writing, that it wishes to terminate this Agreement at any time before the expiration of the Term. In the event Manager gives Model notice of termination, this Agreement shall terminate thirty (30) days from the date of such notice, unless the notice states otherwise.


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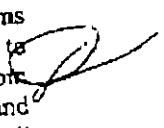
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Manager's obligation to continue to pay Model its fees hereunder, if any, shall survive termination of this Agreement. 

4. (A) As compensation for Manager's services hereunder, Model shall pay Manager sums equal to twenty percent (20%) of all "gross receipts" ("Fee") as hereinafter defined, off the top, from all sources paid or accrued to, or earned or received by Model or on Model's behalf or for Model's benefit, directly or indirectly, during the Term of this Agreement, and thereafter: (i) for any employment, engagement, commitment or contract in existence on the date hereof or negotiated for or entered into during the Term, and any renewal, extension, modification, amendment thereof or addition thereto, including a new agreement for an additional term with the same or related parties; (ii) any employment, engagement, commitment or contract substituted for or replacing, directly or indirectly, employment, engagements, commitments or contracts currently in existence or negotiated for or entered into during the Term and any renewal, extension, modification, amendment thereof or addition thereto, including a new agreement for an additional term with the same or related parties; and, (iii) any and all judgments, awards, settlements, payments, damages and proceeds relating to any suits, claims, actions or proceedings arising out of the alleged breach of non-performance by others of any of the contracts, engagements, commitments or other agreements referred to herein. Expiration or termination of this Agreement shall not affect Manager's rights to compensation as herein provided. 

(B) Manager's full participation in Model's gross receipts from contracts / agreements entered into or substantially negotiated during the Term hereof shall continue for as long as gross receipts are payable to Model per the terms of said contracts / agreements, and any renewals, extensions, re-negotiations, modifications, or amendments thereof. 

(C) The term "gross receipts" as used herein shall be deemed to include all forms of income payments, consideration and compensation including but not limited to advances, earnings, fees, royalties, bonuses and income in kind, regardless of by whom procured, secured or arranged, however, within the scope of Model's Career and professional activities hereunder. The term Model's "professional activities" shall include without limitation, any use of Model's talents and activities throughout the fashion, modeling and entertainment industries. 

(D) Model understands that Manager is entitled to receive from some or all of the clients who may utilize Model's services a service charge, agency fee or other compensation ("Client Fee") over and above the Fee Manager receives from Model, and Model acknowledges that ~~that~~ such compensation is an additional inducement for Manager to act on Model's behalf and an important element in the compensation for which his/her fee includes the Client Fee. Model agrees that Manager has the right to deduct such Client Fee from Model's gross compensation paid by the client in addition to Manager's Fee. Manager's Fee and Client Fee extend to any booking or engagement performed by Model subsequent to the termination of this Agreement if such booking or 

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engagement was negotiated, solicited or accepted by Model prior to such termination or is a continuation or work which began prior to termination, including renewals, options and renegotiated contracts.

5. (A) Gross receipts shall be sent to Manager. Model shall cause all contracts and agreements with third parties concerning Model's professional activities to provide for Model's compensation under those contracts and agreements to be paid directly to Manager. Upon Manager's receipt of gross receipts, Manager shall deduct from such gross receipts: (i) any and all fees, costs, and expenses advanced or incurred by Manager on Model's behalf, including any and all expenses advanced or incurred by Manager on Model's behalf before and after execution of this Agreement; and, (ii) all compensation or consideration due Manager hereunder. Manager shall remit the balance of gross receipts, if any, to Model no later than ten (10) calendar days after receipt of gross receipts by Manager.

(B) In the event that gross receipts are sent to Model, Model shall promptly notify Manager of its receipt of same. In this event, Model shall promptly, and in no event later than five (5) calendar days after receipt thereof send the entire gross receipts proceeds to Manager for allocation and distribution as per Par. 5(A), above.

6. Model shall, notwithstanding anything elsewhere contained herein, reimburse Manager for any and all costs or expenses Manager may incur, or any moneys Manager may advance in connection with Model's Career and professional activities hereunder, including but not limited to photographs, clothing and accessories, any and all equipment, advertising, publicity or promotion costs, long-distance telephone calls, travel and transportation expenses, administration, auditing fees, and any and all other costs incurred by Manager, from any and all monies earned by Model hereunder, and, if no monies are earned by Model hereunder or monies earned are insufficient to cover Manager's expenses, Model shall nevertheless reimburse Manager within six (6) months of Manager's incurring any particular expense. Manager may, but shall not be obligated to, commence legal proceedings to collect amounts due to Model from clients, but if Manager does, Model shall bear the expenses associated with such proceedings.

7. Model grants to Manager during the Term the nonexclusive right to use and publish and to permit others to use and publish Model's professional name, likeness and biographical material concerning Model, for advertising and purposes of trade and otherwise without limitation in connection with the furtherance of Model's Career and professional activities. Manager shall have the right to advertise the fact that Manager represents Model in connection with Model's activities hereunder. Manager shall have the right, within Manager's sole discretion, to publish Model's name, likeness, image, biographical information and statistics on its website for as long as Model is represented by Manager.

8. (A) Model warrants and represents that Model: (i) has the full right, power and authority to enter into this agreement and to grant to Manager the rights granted herein; (ii) is under no obligation or disability or prohibition which will or might prevent Model

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from keeping or performing Model's covenants, promises, representations and warranties contained herein; (iii) will not, during the Term, enter into any agreement or commitment which shall or might in any manner interfere with or prevent Model's carrying out the terms and conditions of this Agreement; and, (iv) will not, during the Term, engage any other person, firm or corporation to act as Model's personal manager or in any similar capacity.

(B) Model shall indemnify and hold Manager harmless from any loss, liability or damage (including reasonable attorney's fees) arising out of or connected with any claim by a third party which is inconsistent with any of the warranties, representations, covenants or promises made by Model hereunder. Model will reimburse Manager on demand for any payment made by Manager at any time in respect of any liability or claim to which the foregoing indemnity relates.



9. Model hereby authorizes and appoints Manager to be Model's agent and attorney-in-fact for the purpose of (a) negotiating, renegotiating, contracting and executing for Model and in Model's name and on Model's behalf and any and all agreements, documents, and instruments providing for Model's services to clients pursuant hereto; (b) approving and permitting the use of Model's name, image, voice, caricatures and the like for the purposes of advertising and publicity; (c) collecting and receiving sums payable to Model, endorsing Model's name upon and depositing in Manager's account all checks payable to Model, and retaining therefrom all sums owing to Manager; and, (d) demanding, suing for and collecting, all claims, money, interest and other items that may be due Model or belong to Model.



10. Manager shall have the right to assign this Agreement and any of Manager's rights hereunder without limitation. Manager shall have the right to delegate the performance of Manager's obligations hereunder without limitation. Model shall not have the right to assign this Agreement or delegate any of Model's obligations hereunder.

11. Manager shall not be liable for any breach of contract or act or omission on the part of anyone with whom any engagement or contract is negotiated, arranged or secured.

12. No breach or failure to perform any terms of this Agreement by either Manager or Model which would otherwise be a material breach of this Agreement, shall be considered a material breach of this Agreement, unless the party alleged to be in breach does not cure the same within a further period of thirty (30) days after receipt of written notice from the alleging party.

13. Manager shall have the right, at Manager's election, to suspend the operation of this Agreement if for any reason whatsoever Model is unable or unwilling to render services in the entertainment industries. Such suspension shall commence upon written notice to Model and shall last for the duration of any such unavailability or unwillingness to render services. At Manager's election, a period of time equal to the duration of such suspension shall be added to Term. In addition, if Model fails to render services in the



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entertainment industries as aforesaid, then Manager may, in addition to other remedies provided for herein, terminate this contract upon written notice to Model. Notwithstanding anything to the contrary contained herein, Model shall be responsible for reimbursing Manager for any and all costs and expenses incurred by Manager in connection with Model's Career and professional activities within ten (10) calendar days of the date of termination. In the event that Model fails to so reimburse Manager, Manager shall have the right to avail itself of any all relief, including damages, injunction and equity, available to it under the law.

14. Any notice hereunder shall be sent to Model at the address above specified or any other address of which Model gives Manager notice. Any notices hereunder shall be sent to Manager at the address above specified or any other address of which Manager gives Model notice, with a copy to Natalia Nastaskin, Esq., 250 West 57th Street, Suite 917, New York, New York 10107. All notices shall be delivered personally, by mail, e-mail, facsimile or telegraph. The date of personal delivery, mailing receipt date, e-mail date, facsimile date or delivery to a telegraph office shall be the effective date of the notice.

15. This Agreement does not constitute or acknowledge any partnership or joint venture between the parties. Model understands and agrees that he / she is an independent contractor and not an employee of Manager, and, as such, shall be responsible for paying his/her own taxes from any and all monies earned hereunder.

16. This Agreement represents the entire agreement between the parties with respect to the subject matter hereof, and no modification, amendment, waiver, termination or discharge of this agreement or any provision thereof, shall be binding unless in writing signed by Model and Manager. No waiver of any provision or default under this Agreement shall affect Manager's rights thereafter to enforce such provisions or to exercise any right or remedy in the event of any other default, whether or not similar. This Agreement shall be construed in accordance with the laws of the State of New York, applicable to contracts entered into and wholly performed therein. If any provision of this Agreement violates or conflicts with any law, governmental rule or regulation or judicial decree, including any requirements for judicial approval, to the extent required, of all or any part of this Agreement, such provision or provisions shall be deemed amended to the minimum extent necessary to effect compliance with such law, rule, regulation or decree and as so amended shall remain in full force and effect.

17. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, administrators, executors, successors and assigns.

18. MODEL REPRESENTS AND WARRANTS THAT MODEL HAS BEEN ADVISED OF MODEL'S RIGHT TO SEEK LEGAL COUNSEL OF MODEL'S OWN CHOOSING IN CONNECTION WITH THE NEGOTIATION AND EXECUTION OF THIS CONTRACT.

19. IF MODEL IS EIGHTEEN (18) YEARS OF AGE OR OVER, MODEL MAY SIGN THIS AGREEMENT ON HIS/HER OWN BEHALF, AND BY SO DOING MODEL

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EXPRESSLY REPRESENTS AND WARRANTS THAT MODEL HAS REACHED 18 YEARS OF AGE. IF MODEL HAS NOT YET REACHED 18 YEARS OF AGE, HIS/HER PARENT(S) OR LEGAL GUARDIAN(S) MUST READ THIS AGREEMENT AND SIGN WHERE INDICATED BELOW. IN ADDITION, MODEL AND HIS/HER PARENT(S) OR LEGAL GUARDIAN(S) ACKNOWLEDGE THAT IT IS MODEL'S AND THEIR RESPONSIBILITY TO OBTAIN ALL NECESSARY GOVERNMENTAL CONSENTS, PERMITS AND APPROVALS REQUIRED BY STATE AND FEDERAL LAWS AND REGULATIONS FOR THE PERFORMANCE OF SERVICES HEREUNDER BY MINORS, INCLUDING WITHOUT LIMITATION WORK PERMITS VISAS, AND COURT APPROVALS WHERE NECESSARY. AT MODEL'S REQUEST MANAGER WILL GUIDE AND COUNSEL MODEL WITH RESPECT TO OBTAINING SUCH CONSENTS, PERMITS, VISAS AND APPROVALS, AND MODEL AGREES TO SIGN ALL DOCUMENTS REQUIRED IN CONNECTION THEREWITH. MODEL ACKNOWLEDGES THAT UPON HIS/HER REACHING 18 YEARS OF AGE THIS AGREEMENT WILL CONTINUE IN FULL FORCE AND EFFECT THROUGHOUT ITS TERM AND ANY RENEWALS THEREOF, AND MODEL'S CONTINUED ACCEPTANCE OF ASSIGNMENTS FROM MANAGER SHALL CONSTITUTE RATIFICATION OF ALL OF THE TERMS AND CONDITIONS HEREOF.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

MANAGER:

VNY MODEL MANAGEMENT, LLC.

BY:

Lana Winifors

TITLE:

President

AGREED AND ACCEPTED:**MODEL:**

Jordan-Annette J. Richardson
Print Name

Model's Soc. Sec. #: 230558610

* homework 3 hr per day minimum
* home time with prior notification
* Jordan Richardson has the right to cancel the contract with a written notice 30 days prior to the expiration of the contract

AGREED AND ACCEPTED:**MODEL'S PARENT /****LEGAL GUARDIAN**

Shantash

Lana Winifors
Print Name

Meun
Capacity in which signed

VNY MODEL MANAGEMENT LLC 2055
 234535 10/13/06
 Jordan Richardson
 Chase Bank
 \$4,949.95
 OCT 25

VNY MODEL MANAGEMENT LLC 2077
 234555 10/13/06
 Jordan Richardson
 Chase Bank
 \$18,097.75
 OCT 25

VNY MODEL MANAGEMENT LLC 2080
 234535 10/13/06
 Jordan Richardson
 Chase Bank
 \$10,595.09
 OCT 25

VNY MODEL MANAGEMENT LLC 2104
 234555 10/13/06
 Jordan Richardson
 Chase Bank
 \$9,403.43
 NOV 01

VNY MODEL MANAGEMENT LLC 2125
 0557 10/13/06
 Jordan Richardson
 Chase Bank
 \$3,225.76
 NOV 10

VNY MODEL MANAGEMENT LLC 2132
 223 11/1/06
 Jordan Richardson
 Chase Bank
 \$6,400.00
 NOV 08

VNY MODEL MANAGEMENT LLC 2144
 0512 11/1/06
 Jordan Richardson
 Chase Bank
 \$3,630.40
 NOV 20

VNY MODEL MANAGEMENT LLC 2152
 1136 11/13/06
 Jordan Richardson
 Chase Bank
 \$2,983.05
 NOV 24

VNY MODEL MANAGEMENT LLC 2208
 234535 11/1/06
 Jordan Richardson
 Chase Bank
 \$55,962.00
 NOV 30

VNY MODEL MANAGEMENT LLC 2347
 1074 11/13/07
 Jordan Richardson
 Chase Bank
 \$4,581.46
 JAN 16

VNY MODEL MANAGEMENT LLC 2394

1/29/07

Jordan Richardson

CHASE

17,244.15

FEB 02 \$17,241.15

VNY MODEL MANAGEMENT LLC 2430

1/29/07

Jordan Richardson

CHASE

4,621.64

FEB 27 \$4,621.64

VNY MODEL MANAGEMENT LLC 2436

2/14/07

Jordan Richardson

CHASE

1,600.00

MAR 07 \$1,600.00

VNY MODEL MANAGEMENT LLC 2438

2/14/07

Jordan Richardson

CHASE

4,014.50

MAR 07 \$4,014.50

VNY MODEL MANAGEMENT LLC 2448

2/26/07

Jordan Richardson

CHASE

23,083.00

FEB 27 \$23,083.00

VNY MODEL MANAGEMENT LLC 2465

2/26/07

Jordan Richardson

CHASE

1,691.47

MAR 07 \$1,691.47

VNY MODEL MANAGEMENT LLC 2488

3/15/07

Jordan Richardson

CHASE

3,092.00

MAR 23 \$3,092.00

VNY MODEL MANAGEMENT LLC 2527

3/15/07

Jordan Richardson

CHASE

2,379.75

MAR 23 \$2,379.75

VNY MODEL MANAGEMENT LLC 2537

3/29/07

Jordan Richardson

CHASE

2,800.00

MAR 27 \$2,800.00

VNY MODEL MANAGEMENT LLC 2562

3/29/07

Jordan Richardson

CHASE

20,585.00

APR 10 \$20,585.00

VNY MODEL MANAGEMENT LLC 1808
PAY TO THE ORDER OF Jordan Richardson \$4,769.72
ONE THOUSAND AND SEVEN HUNDRED AND NINETY DOLLARS
CHASE
FOR Wendy Finnie Sha
/0000476972

CHECK NO. 1808 \$4,769.72 PAID 06/28

VNY MODEL MANAGEMENT LLC 1835
PAY TO THE ORDER OF Jordan Richardson \$70,308.15
SEVENTY THOUSAND THREE HUNDRED AND EIGHTEEN DOLLARS
CHASE
FOR Wendy Finnie Sha
/0000476972

CHECK NO. 1835 \$70,308.15 PAID 07/25

VNY MODEL MANAGEMENT LLC 1878
PAY TO THE ORDER OF Jordan Richardson \$103,950.8
ONE HUNDRED AND THIRTY THOUSAND AND EIGHT DOLLARS
CHASE
FOR Wendy Finnie Sha
/0000476972

CHECK NO. 1878 \$103,950.85 PAID 08/02

VNY MODEL MANAGEMENT LLC 1897
PAY TO THE ORDER OF Jordan Richardson \$11,003.10
ELEVEN THOUSAND AND THREE DOLLARS
CHASE
FOR Wendy Finnie Sha
/0000476972

CHECK NO. 1897 \$11,003.10 PAID 08/03

VNY MODEL MANAGEMENT LLC 1915
PAY TO THE ORDER OF Jordan Richardson \$2,530.00
TWO THOUSAND FIVE HUNDRED AND THIRTY DOLLARS
CHASE
FOR Wendy Finnie Sha
/0000476972

CHECK NO. 1915 \$2,530.00 PAID 08/14

VNY MODEL MANAGEMENT LLC 1935
PAY TO THE ORDER OF Jordan Richardson \$39,661.22
THIRTY NINE THOUSAND SIX HUNDRED AND TWENTY TWO DOLLARS
CHASE
FOR Wendy Finnie Sha
/0000476972

CHECK NO. 1935 \$39,661.22 PAID 08/24

VNY MODEL MANAGEMENT LLC 1985
PAY TO THE ORDER OF Jordan Richardson \$2,850.31
TWO THOUSAND EIGHT HUNDRED AND FIFTY ONE DOLLARS
CHASE
FOR Wendy Finnie Sha
/0000476972

SEP 14 \$2,850.31

VNY MODEL MANAGEMENT LLC 1998
PAY TO THE ORDER OF Jordan Richardson \$2,734.69
TWO THOUSAND SEVEN HUNDRED AND THIRTY FIVE DOLLARS
CHASE
FOR Wendy Finnie Sha
/0000476972

SEP 14 \$2,734.69

VNY MODEL MANAGEMENT LLC 2015
PAY TO THE ORDER OF Jordan Richardson \$2,658.50
TWO THOUSAND SIX HUNDRED AND FIFTY EIGHT DOLLARS
CHASE
FOR Wendy Finnie Sha
/0000476972

SEP 05 \$2,658.50

VNY MODEL MANAGEMENT LLC 2043
PAY TO THE ORDER OF Jordan Richardson \$7,770.83
SEVEN THOUSAND SEVEN HUNDRED AND EIGHTY THREE DOLLARS
CHASE
FOR Wendy Finnie Sha
/0000476972

SEP 02 \$7,770.83

FROM : bella

FAX NO. : 7183320403

Apr. 19 2007 04:19PM P1

☐ CORRECTED (if checked)

PAYER'S name, street address, city, state, ZIP code, and telephone no.		1 Rents	OMB No. 1545-0115	Miscellaneous Income
V N Y MODEL MANAGEMENT LLC		2 Royalties	2006	
928 BROADWAY, STE. 801 NEW YORK, NY 10010 () -		3 Other income	Form 1099-MISC	
PAYER'S Federal identification number	RECIPIENT'S identification number	4 Federal income tax withheld	5 Medical and health care payments	Copy B For Recipient
RECIPIENT'S name	JORDAN RICHARDSON	6 Substantive payments in lieu of dividends or stock	7 Crop insurance proceeds	
Street address (including apt. no.)		8 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	9 Excess golden parachute payments	
City, state, and ZIP code		10 State tax withheld	11 State/Payer's state no.	
Account number (see instructions)		12 Gross proceeds paid to an attorney	13 State income	
15a Section 408A deferrals	15b Section 408A income	16 State tax withheld	17 State/Payer's state no.	
\$	\$	\$	\$	

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

Form 1099-MISC MV1099M-B

(Keep for your records.)

Department of the Treasury - Internal Revenue Service

NISSENBAUM LAW GROUP, LLC

(FORMERLY NISSENBAUM & ASSOCIATES, LLC)

ATTORNEYS AT LAW
WWW.GDNLAW.COM

2400 MORRIS AVENUE
UNION, NEW JERSEY 07083

P. 908.686.8000
F. 908.686.8550

**NISSENBAUM
LAW GROUP, LLC**



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CZ@GDNLAW.COM

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AP@GDNLAW.COM

Please reply to: X NJ NY.

NEW YORK:
140 BROADWAY, 46TH FLOOR
NEW YORK, NEW YORK 10005
P. 212.871.5711
F. 212.871.5712

* Admitted in both
New Jersey and New York

April 23, 2007

VIA FACSIMILE ONLY

Wilmer Grier, Esq.
603 Jefferson Avenue
Brooklyn, New York 11221

Re: Jordan Richardson, Jordan Richardson, Inc.
and Lisa-Athena S. Abu Hantash

Dear Ms. Grier:

In response to your inquiry regarding work for Jordan, you were previously advised that Ms. Richardson's obligation to perform any modeling services for your clients ended on April 22, 2007. That has not changed. As such, she does not intend to accept any assignments from V Model Management and/or VNY Model Management now or in the future.

NISSENBAUM LAW GROUP, LLC

By: 
Gavin I. Handwerker

58 N.Y.2d 337

nts 49
 neral Obligations Law section re
 prior court approval of infants' con-
 applies only to performing artists

"I hereby waive any right to inspect or approve the finished photograph or advertising copy or printed matter that may be used in conjunction therewith or to the eventual use that it might be applied."

58 N.Y.2d 346

SHIELDS v. GROSS

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Cite as 461 N.Y.S.2d 254 (Ct.App. 1983)

the advertiser under the common law for using her pictures, the new statute gives a cause of action to those similarly situated unless they have executed a consent or release in writing to the advertiser before use of the photographs. The statute acts to restrict an advertiser's prior unrestrained common-law right to use another's photograph until written consent is obtained. Once written consent is obtained, however, the photograph may be published as permitted by its terms (see *Welch v. Mr. Christmas*, 57 N.Y.2d 143, 454 N.Y.S.2d 971, 440 N.E.2d 1317).

[2, 3] Concededly, at common law an infant could disaffirm his written consent (see *Joseph v. Schatzkin*, 259 N.Y. 241, 181 N.E. 464; *Casey v. Kastel*, 237 N.Y. 305, 142 N.E. 671) or, for that matter, a consent executed by another on his or her behalf (see *Lee v. Silver*, 262 App.Div. 149, 28 N.Y.S.2d 333, affd. 287 N.Y. 575, 38 N.E.2d 233; *Goldfinger v. Doherty*, 153 Misc. 826, 276 N.Y.S. 289, affd. 244 App.Div. 779, 280 N.Y.S. 778; *Aborn v. Janis*, 62 Misc. 95, 113 N.Y.S. 309, affd. 122 App.Div. 893, 106 N.Y.S. 1115). Notwithstanding these rules, it is clear that the Legislature may abrogate an infant's common-law right to disaffirm (see, e.g., General Obligations Law, § 3-101, subd. 3; § 3-102, subd. 1; § 3-103; Education Law, § 281; Insurance Law, § 145) or, conversely, it may confer upon infants the right to make binding contracts (see *Matter of T.W.C.*, 38 N.Y.2d 128, 130, 379 N.Y.S.2d 1, 341 N.E.2d 526 [Domestic Relations Law, § 115-b]; *Hamm v. Prudential Ins. Co. of Amer.*, 137 App. Div. 504, 122 N.Y.S. 35 [Insurance Law, § 145, formerly § 55]; *Matter of Presler*, 171 Misc. 559, 13 N.Y.S.2d 49). Where a statute expressly permits a certain class of agreements to be made by infants, that settles the question and makes the agreement valid and enforceable. That is precisely what happened here. The Legislature, by adopting section 51, created a new cause of action and it provided in the statute itself the method for obtaining an infant's consent to avoid liability. Construing the statute strictly, as we must since it is in derogation of the common law (see McKin-

ney's Cons. Laws of N.Y., Book 1, Statutes, § 301, subd. b), the parent's consent is binding on the infant and no words prohibiting disaffirmance are necessary to effectuate the legislative intent. Inasmuch as the consents in this case complied with the statutory requirements, they were valid and may not be disaffirmed (see *Matter of T.W.C.*, *supra*).

[4, 5] Nor do we believe that the consents may be considered void because the parties failed to comply with the provisions of section 3-105 of the General Obligations Law requiring prior court approval of infants' contracts. By its terms, section 3-105 applies only to performing artists, such as actors, musicians, dancers and professional athletes moreover, it is apparent by comparing other statutes with it that the Legislature knowingly has differentiated between child performers and child models. Thus, section 3229 (formerly § 3216-c) of the Education Law, which applies to "Child performers", is referred to in section 3-105 (subd. 2, par. a) of the General Obligations Law but section 3230 of the Education Law, which applies to child models, is not. Child models are also recognized as a separate work classification in section 172 (subd. 2, par. f) of the Labor Law. Furthermore, section 3-105 was not designed to expand the rights of infants to disaffirm their contracts, as the concurring Justice at the Appellate Division would apply it, but to provide assurance to those required to deal with infants that the infants would not later disaffirm executory contracts to the adult contracting party's disadvantage (see *Matter of Prinze [Jonas]*, 38 N.Y.2d 570, 575, 381 N.Y.S.2d 824, 345 N.E.2d 295). Sections 50 and 51 as we interpret them serve the same purpose, to bring certainty to an important industry which necessarily uses minors for its work. This same need for certainty was the impetus behind not only section 3-105 but the various other sections of the General Obligations Law which prohibit disaffirmance of an infant's contract.

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[6] Realistically, the procedures of prior court approval set forth in section 3-105, while entirely appropriate and necessary for performing artists and professional athletes, are impractical for a child model who, whether employed regularly or sporadically, works from session to session, sometimes for many different photographers. Moreover, they work for fees which are relatively modest when compared to those received by actors or professional athletes who may be employed by one employer at considerably greater remuneration for a statutorily permissible three-year term. Indeed, the fee in this case was \$450, hardly sufficient to warrant the elaborate court proceedings required by section 3-105 or to necessitate a court's determination of what part should be set aside and preserved for the infant's future needs. Nor do we think court approval necessary under the circumstances existing in the normal child model's career. Given the nature of the employment, it is entirely reasonable for the Legislature to substitute the parents' judgment and approval of what is best for their child for that of a court.

It should be noted that plaintiff did not contend that the photographs were obscene or pornographic. Her only complaint was that she was embarrassed because "they [the photographs] are not me now." The trial court specifically found that the photographs were not pornographic and it enjoined use of them in pornographic publications. Thus, there is no need to discuss the unenforceability of certain contracts which violate public policy (see, e.g., Penal Law, § 235.00 *et seq.*) or to equate an infant's common-law right to disaffirm with that principle, as the dissent apparently does.

[7] Finally, it is claimed that the application of the statute as we interpret it may result in unanticipated and untoward consequences. If that be so, there is an obvious remedy. A parent who wishes to limit the publicity and exposure of her child need only limit the use authorized in the consent, for a defendant's immunity from a claim for invasion of privacy is no broader than the consent executed to him (see *Welch v.*

Mr. Christmas, 57 N.Y.2d 143, 454 N.Y.S.2d 971, 440 N.E.2d 1317, *supra*; *Adrian v. Unterman*, 281 App.Div. 81, 118 N.Y.S.2d 121, *affd.* 306 N.Y. 771, 118 N.E.2d 477).

The order of the Appellate Division should be modified by striking the further injunction against use of the photographs for uses of advertising and trade, and as so modified, the order should be affirmed.

JASEN, Judge (dissenting).

Since I believe that the interests of society and this State in protecting its children must be placed above any concern for trade or commercialism, I am compelled to dissent. The State has the right and indeed the obligation to afford extraordinary protection to minors.

At the outset, it should be made clear that this case does not involve the undoing of a written consent given by a mother to invade her infant daughter's privacy so as to affect prior benefits derived by a person relying on the validity of the consent pursuant to sections 50 and 51 of the Civil Rights Law. Rather, what is involved is the right of an infant, now 17 years of age, to disaffirm her mother's consent with respect to future use of a nude photograph taken of her at age 10.

The majority holds, as a matter of law, not only in this case but as to all present and future consents executed by parents on behalf of children pursuant to sections 50 and 51 of the Civil Rights Law, that once a parent consents to the invasion of privacy of a child, the child is forever bound by that consent and may never disaffirm the continued invasion of his or her privacy, even where the continued invasion of the child's privacy may cause the child enormous embarrassment, distress and humiliation.

I find this difficult to accept as a rational rule of law, particularly so when one considers that it has long been the rule in this State that a minor enjoys an almost absolute right to disaffirm a contract entered into either by the minor or by the minor's parent on behalf of the minor (*Sternlieb v. Normandie Nat. Securities Corp.*, 263 N.Y.

245, 188 N.E. 726; *Josep*, N.Y. 241, 181 N.E. 464; *Book Co. v. Connelly*, 200 722; *Rice v. Butler*, 160 275; *Sparman v. Keim*, 1 v. *Green*, 69 N.Y. 553) question does not in any this salutary right.

This right has been fact that the minor held an adult (*Sternlieb v. No rities Corp.*, *supra*) or attempted to contractua (*Kaufman v. American Misc.2d* 8, 174 N.Y.S.2d grounds 6 A.D.2d 223, mod. and certified que negative 5 N.Y.2d 1016, 158 N.E.2d 128). Signif not the minor can rest tracting party to the prior to entering the cc only to the extent that t firming the contract, c into a better position th entering the contract. *mandie Nat. Securities C Butler*, *supra*.) In the noted that those who co do so at their own peril. *kin*, *supra*, at p. 243.)

Understandably, such evolved as a result of t provide children with as possible against being t or exploited by adults. scind is a legal right protection of the infant *supra*, at p. 556). This the legal concept that ar of contracting because stand the scope of his ri appreciate the conseque tions of his decisions. feared that as an infan under the complete influ may be unable to act in would allow him to del interests. (28 N.Y.Jur. 221-222.) Allowing a disaffirm a contract is common law developed

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Cite as 461 N.Y.S.2d 254 (Cl.App. 1983)

245, 188 N.E. 726; *Joseph v. Schatzkin*, 259 N.Y. 241, 181 N.E. 464; *International Text Book Co. v. Connelly*, 206 N.Y. 188, 99 N.E. 722; *Rice v. Butler*, 160 N.Y. 578, 55 N.E. 275; *Sparman v. Keim*, 83 N.Y. 245; *Green v. Green*, 69 N.Y. 553) and the statute in question does not in any manner abrogate this salutary right.

This right has been upheld despite the fact that the minor held himself out to be an adult (*Sternlieb v. Normandie Nat. Securities Corp.*, *supra*) or that a parent also attempted to contractually bind the minor (*Kaufman v. American Youth Hostels*, 13 Misc.2d 8, 174 N.Y.S.2d 580, mod. on other grounds 6 A.D.2d 223, 177 N.Y.S.2d 587, mod. and certified question answered in negative 5 N.Y.2d 1016, 185 N.Y.S.2d 268, 158 N.E.2d 128). Significantly, whether or not the minor can restore the other contracting party to the position he was in prior to entering the contract is pertinent only to the extent that the minor, by disaffirming the contract, cannot put himself into a better position than he was in before entering the contract. (*Sternlieb v. Normandie Nat. Securities Corp.*, *supra*; *Rice v. Butler*, *supra*.) In the past, this court has noted that those who contract with minors do so at their own peril. (*Joseph v. Schatzkin*, *supra*, at p. 243.)

Understandably, such a broad right has evolved as a result of the State's policy to provide children with as much protection as possible against being taken advantage of or exploited by adults. "The right to rescind is a legal right established for the protection of the infant" (*Green v. Green*, *supra*, at p. 556). This right is founded in the legal concept that an infant is incapable of contracting because he does not understand the scope of his rights and he cannot appreciate the consequences and ramifications of his decisions. Furthermore, it is feared that as an infant he may well be under the complete influence of an adult or may be unable to act in any manner which would allow him to defend his rights and interests. (28 N.Y.Jur., Infants, § 3, pp. 221-222.) Allowing a minor the right to disaffirm a contract is merely one way the common law developed to resolve those in-

equities and afford children the protection they require to compensate for their immaturity.

Can there be any question that the State has a compelling interest in protecting children? Indeed, the most priceless possessions we have in the Nation are our children. Recognizing this compelling interest in children, the State has assumed the role of *parens patriae*, undertaking with that role the responsibility of protecting children from their own inexperience. Acting in that capacity, the State has put the interests of minors above that of adults, organizations or businesses. (*Rice v. Butler*, *supra*; *Kaufman v. American Youth Hostels*, *supra*; *Sternlieb v. Normandie Nat. Securities Corp.*, *supra*.) The broad right given a minor to disaffirm a contract is, of course, an obvious example of the State's attempt to afford an infant protection against exploitation by adults. (28 NY Jur, Infants, *op. cit.*) Thus, I am persuaded that, in this case, 17-year-old Brooke Shields should be afforded the right to disaffirm her mother's consent to use a photograph of her in the nude, taken when she was 10 years old, unless it can be said, as the majority holds, that the Legislature intended to abrogate that right when it enacted sections 50 and 51 of the Civil Rights Law.

The legislative history of this statute enacted in the early 1900's is understandably scarce. The case law prior to its passage, however, indicates that a minor's right to disaffirm a contract under the common law was well established at that time. Additionally, it is well accepted that this statute was enacted in response to this court's decision in *Roberson v. Rochester Folding Box Co.*, 171 N.Y. 538, 64 N.E. 442; see, also, *Arrington v. New York Times Co.*, 55 N.Y.2d 433, 439, 449 N.Y.S.2d 941, 434 N.E.2d 1319, in which the court held that a minor had no recourse against an entrepreneur who made commercial use out of her picture without her consent. Apparently, in order to alleviate litigation over whether or not consent had been given, the Legislature required that such consent be in writing and, if the person was a minor, that the

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to be sitting outside the judicial department of his residence. The short answer to this argument is that our Constitution specifically provides that once a Justice is properly assigned in accordance with subdivision g of section 26, as Justice Roberts was, he acquires all of "the powers, duties and jurisdiction of a judge or justice of the court to which assigned." (Art. VI, § 26, subd. k.) Since Special Narcotics Court Judges have, as we interpret CPL 700.05 (subd. 4) in light of article 5-B of the Judiciary Law, been given city-wide jurisdiction to authorize the interception of drug-related conversations, Justice Roberts' assignment fully complied with both subdivisions g and k of section 26 of article VI of the New York Constitution.

Accordingly, the orders of the Appellate Division should be affirmed.

COOKE, C.J., and JONES, WACHTLER, FUCHSBERG, MEYER and SIMONS, J.J., concur.

In each case: Order affirmed.



448 N.E.2d 108

58 N.Y.2d 338

1338 1Brooke SHIELDS, Respondent-Appellant,

v.

Garry GROSS, Appellant-Respondent.

Court of Appeals of New York.

March 29, 1983.

Infant model brought action against photographer seeking damages and injunctive relief to prevent the photographer from using photographs taken when the model was ten years old. The Supreme Court, Trial Term, New York County, Edward J. Greenfield, J., denied the application for a permanent injunction except to the extent of enjoining the photographer from licensing or permitting the licensing of photographs for use in pornographic pub-

lications. Appeal was taken. The Supreme Court, Appellate Division, First Judicial Department, 88 A.D.2d 846, 451 N.Y.S.2d 419, modified the judgment and granted the model a permanent injunction enjoining the photographer from using the pictures for purposes of advertising or trade. Cross-appals were taken. The Court of Appeals, Simons, J., held that: (1) the model could not maintain an action against the photographer where the model's mother had effectively consented, and (2) the section requiring prior court approval of infants' contracts did not apply to the model.

Order modified and, as modified, affirmed.

Jasen, J., dissented with an opinion in which Fuchsberg and Meyer, J.J., concurred.

1. Torts ⇨8.5(8)

Section creating civil cause of action for use of person's name, portrait or picture for advertising purposes without prior written consent acts to restrict advertiser's prior unrestrained common-law right to use another's photograph until written consent is obtained; once written consent is obtained, photograph may be published as permitted by its terms. McKinney's Civil Rights Law § 51.

2. Infants ⇨47

Where statute expressly permits certain class of agreements to be made by infants, that settles the question and makes agreement valid and enforceable.

3. Torts ⇨8.5(8)

Under section creating civil cause of action for use of person's name, portrait or picture for advertising purposes without prior written consent, parent's consent was binding on infant model and no words prohibiting disaffirmance were necessary to effectuate legislative intent. McKinney's Civil Rights Law § 51.

4. Infants ⇨49

General Obligations Law section requiring prior court approval of infants' contracts applies only to performing artists,

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such as actors, professional athletes. McKinney's Civil Rights Law § 3-

5. Infants ⇨49

General Obligations Law section requiring prior court approval of infants' contracts did not apply to model's General Obligations Law § 3-

6. Infants ⇨49

Procedures for infants' contracts under General Obligations Law, while necessary for performing artists, are not necessary for model who, whether sporadically, works sometimes for months. McKinney's Civil Rights Law § 3-105.

7. Torts ⇨8.5(8)

Parent who waives child's privacy and exposure of child to the use authorized by parent's immunity of privacy is not bound by child's consent to him. McKinney's Civil Rights Law § 51.

1339 1A Richard Golub, New York City, for respondent.

1340 1Sandor Frankel, New York City, for appellant.

1341 1OPINION OF

SIMONS, Judge.

The issue on this appeal is whether the infant model may maintain an action for breach of stricted consent except to the extent of her parent and main

* The consents provided by the infant model's representatives, and the photographer in writing with his permission, and permission to exhibit and/or publish, any pictures or portraits be distorted in character with my own

parent sign the consent form. There is no indication that by requiring consent from the minor's parents, the Legislature intended in any way to abrogate that minor's right to disaffirm a contract at some future date. Indeed, the requirement of ¹³⁵⁰parental consent, like the broad right to disaffirm a contract, was granted in order to afford the minor as much protection against exploitation as possible. The assumption, of course, was that a parent would protect the child's interests. But if that assumption proves invalid, as may well be the case if a minor upon reaching the age of maturity realizes that the parent, too, has been exploiting him or her or had failed to adequately guard his or her interest by giving consent for pictures which caused humiliation, embarrassment and distress, then the child should be able to cure the problem by disaffirming the parent's consent. To say, as does the majority, that the mother could have limited her consent avoids the issue. If the parent has failed to put any restrictions on the consent, as occurred in this case, and has thus failed to protect the child's future interests, I see no reason why the child must continue to bear the burden imposed by her mother's bad judgment. This means the child is forever bound by its parent's decisions, even if those decisions turn out to have been exploitative of the child and detrimental to the child's best interests.

Furthermore, nothing compels the majority's conclusion that the right to disaffirm a contract was eliminated when the Legislature created a new cause of action for invasion of privacy merely because that statute provided safeguards for the child's privacy by giving the parent the right to grant or withhold consent. When both rights are

viewed, as I believe they must be, as protection for the child, logic and policy compels the conclusion that the two rights should exist coextensively. The requirement that a parent consent before the child's privacy can be invaded by commercial interests establishes the parent as the first guardian of the child's interest. But the State retains its long-standing role of *parens patriae* so that if the parent fails to protect the child's interests, the State will intervene and do so. One means of doing so is to allow the child to exercise its right to disaffirm if the child concludes that its parent improvidently consented to the invasion of the child's privacy interests. Given the strong policy concern of the State in ¹³⁵¹the child's best interests,* I can only conclude that the Legislature did not intend to abrogate the child's common-law right to disaffirm a contract when it required, by statute, the additional protection of written, parental consent prior to any commercial use of the child's image.

This conclusion is further supported by other statutes in which the Legislature has clearly abrogated the infant's right to disaffirm a contract in those situations in which it has determined that the damage incurred by the minor will be minimal and the cost to the contracting party or society would be great. Invariably, these are contractual situations in which the minor has incurred a contractual obligation in order to receive a benefit which cannot be deemed anything other than a benefit. For example, section 281 of the Education Law negates a minor's right to disaffirm a contract when that contract afforded him a student loan to pursue an advanced education. (See, also, General Obligations Law, § 3-103.) No one can argue that the contract was any-

*The discussion in this opinion of the policy behind affording a child the extraordinary protection of the right to disaffirm a contract should not be read, as the majority does, to equate the right to disaffirm with the principle that a court will refuse to enforce contracts which violate public policy. Indeed, had the courts below found that her mother had contracted for her daughter to pose in an obscene manner or that the photographs were obscene or pornographic, then we would not need to decide the applicability of the infant's right to

disaffirm that contract as I assume the majority would find the contract and the consent incorporated in it to violate public policy. (Penal Law, § 235.00 *et seq.*; *People v. Ferber*, 52 N.Y.2d 674, 439 N.Y.S.2d 863, 422 N.E.2d 523 [Jasen, J. dissenting], rev. — U.S. —, 102 S.Ct. 3348, 73 L.Ed.2d 1113, on remand, 57 N.Y.2d 256, 455 N.Y.S.2d 582, 441 N.E.2d 1100.) A contract held to be unenforceable because it violates public policy is void *ab initio* and, thus, there is no need to consider whether or not it may be disaffirmed.

thing other than beneficial. Such legislation was endorsed by the Revision Commission on the legislative finding "that the [legislation] involved is clearly for the benefit of the infant". (1961 Report of the Commission, pp. 269, 275, citing *Contracts Relating to the Service of Minors and the Treatment of Minors Therefrom*.)

Two factors distinguish this case from the Civil Rights Law freedom of contract provisions which do, in effect, abolish the minor's right to disaffirm a contract. The first is that in this case the Legislature has intended to have made their intention manifest in language which directly abrogates the infant's common-law right. The second is that any reference in the Civil Rights Law to the minor's right to disaffirm a contract is especially when it is clear that the disaffirm was well established. That the Legislature did not intend to abolish that right. Secondly, unlike the freedom of contract provisions which the Legislature designated as immune from disaffirm, it cannot be argued that releasing all rights to the minor, even limited rights to the minor, is necessarily beneficial to the minor, even more true when the case, are of the variety which are exploited in the future or are of questionable taste.

I do not believe that the intent in enacting section 281 of the Civil Rights Law was to abolish the rights of business and commerce to the State's interest in its children. Since this statute is a response to this court's decision in *v. Rochester Folding Box Co.*, which denied an infant plaintiff the invasion of her privacy in using her name without consent, it would seem that the legislative intent was to protect the child's privacy, rather than to protect commercial enterprises.

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must be, as protection and policy compels two rights should be required that the child's privacy and commercial interests of the first guardian of the State retains *parens patriae* so to protect the child's intervene and do so. s to allow the child disaffirm if the child improvidently contract the child's privacy and policy concern the child's best interests,* I the Legislature did the child's common-law contract when it is additional protection consent prior to the child's image.

Further supported by the Legislature has the child's right to disaffirm in situations in which the damage incurred is minimal and the cost to society would be less than the contractual situation. The minor has incurred a cost in order to receive a benefit deemed anything less than, for example, section 50 negates a minor's right to disaffirm a contract when that a student loan to the child. (See, also, *People v. Ferber*, 52 N.Y.2d 523, 448 N.E.2d 102, 1113, on remand, 57 N.Y.2d 582, 441 N.E.2d 102 to be unenforceable policy is void *ab initio* and to consider whether needed.

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thing other than beneficial to the minor. Such legislation was endorsed by the Law Revision Commission on the basis of a legislative finding "that the type of contract involved is clearly for the benefit of the infant". (1961 Report of N.Y. Law Rev. Comm., pp. 269, 275, citing Touster, Contracts Relating to the Services of Talented Minors and the Treatment of Their Earnings Therefrom.)

Two factors distinguish sections 50 and 51 of the Civil Rights Law from those statutory provisions which do, in certain contexts, abolish the minor's right to disaffirm a contract. The first is that in all cases when the Legislature has intended to do so, they have made their intention clear by specific language which directly refers to the infant's common-law right. The absence of any reference in the Civil Rights Law to the minor's right to disaffirm a contract, especially when it is clear that the right to disaffirm was well established, indicates that the Legislature did not intend to affect that right. Secondly, unlike the other kinds of contracts which the Legislature has designated as immune from the minor's right to disaffirm, it cannot be said that a contract releasing all rights to photographs or even limited rights to those pictures is necessarily beneficial to the infant. This is even more true when the pictures, as in this case, are of the variety which can be exploited in the future or used in publications of questionable taste.

I do not believe that the Legislature's intent in enacting sections 50 and 51 of the Civil Rights Law was to elevate the interests of business and commercialism above the State's interest in protecting its children. Since this statute was enacted in response to this court's decision in *Roberson v. Rochester Folding Box Co.* (*supra*), which denied an infant plaintiff any recovery for the invasion of her privacy by a commercial enterprise in using her picture without her consent, it would seem to me that the legislative intent was to expand individual protections, rather than to afford protection to commercial enterprises.

The fact that when an infant disaffirms a contract there may be harsh results to the person or commercial enterprise attempting to exploit the child has never caused the courts to alter the scope of the protection that right affords the child. The overriding interest of society in protecting its children has long been held to outweigh the interests of merchants who attempt to contract with children. (*Sternlieb v. Normandie Nat. Securities Corp.*, *supra*, 263 N.Y. at p. 250, 188 N.E. 726.)

In those situations in which the Legislature has decided that business ventures need additional protection, it has done so not merely by abolishing the infant's right to disaffirm, but, rather, by providing alternative protection. Section 3-105 of the General Obligations Law provides for judicial approval of contracts for the services of child performers or professional athletes. It is clear that the statute protects not only the business interests which are investing in and profiting from the child's talents, but also the child. For instance, paragraph d of subdivision 2 generally restricts such contracts to a three-year period and paragraph e of subdivision 2 provides that even after approving a contract of a child performer, the court may, if it finds that the child's well-being is in any way being impaired by its performance under the contract, revoke or modify the contract so as to protect the child. Similarly, it provides for supervision by the court of the child's earnings to assure that the child will benefit from his labors. The clear intent of such provisions is to protect the child against any exploitation. The failure of the Legislature to cover child models in this provision indicates to me that they intended child models to retain the protections afforded by the common-law right to disaffirm a contract. It is unfortunate that by virtue of the majority's interpretation of the Civil Rights Law those children may not in the future be afforded protection against exploitation by their own parents.

It is even more unfortunate that by its interpretation of sections 50 and 51 the majority takes away a large part of the

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protection those children had at common law.

COOKE, C.J., and JONES and WACHTER, JJ., concur with SIMONS, J.

JASEN, J., dissents in part and votes to affirm in a separate opinion in which FUCHSBERG and MEYER, JJ., concur.

Order modified, with costs to defendant, in accordance with the opinion herein and, as so modified, affirmed.



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¹²⁵⁴ In the Matter of LOCAL 252, TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO, Respondent,

v.

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD, Appellant,

and

Metropolitan Suburban Bus Authority, Intervenor-Appellant.

Court of Appeals of New York.

March 30, 1983.

Petition was filed seeking review of a determination of the Public Employment Relations Board that a union engaged in a strike during a certain time period in January 1980. The Supreme Court, Appellate Division, First Department, 89 A.D.2d 551, 453 N.Y.S.2d 17, annulled the determination. Appeal was taken. The Court of Appeals, Jones, J., held that the determination of the PERB that a strike occurred when bus drivers refused to drive buses which violated the requirements of the Vehicle and Traffic Law was supported by substantial evidence.

Judgment reversed.

1. Labor Relations ⇌ 578

Conclusion of Public Employment Relations Board that union's invoking reference to provisions of Vehicle and Traffic Law in order to justify drivers refusing to drive buses which violated requirements of law was merely pretext for concerted refusal of drivers to operate buses was amply supported in record. McKinney's Civil Service Law § 209; McKinney's Vehicle and Traffic Law § 100 et seq.

2. Labor Relations ⇌ 290

Where reliance on sudden concern for overly meticulous and abnormal observance of statutory commands is purely a subterfuge, incidental circumstance that continued performance of duties in normal manner might entail violation of statute does not legally preclude finding that there has been "strike." McKinney's Civil Service Law § 209.

3. Labor Relations ⇌ 578

Public Employment Relations Board's finding that strike occurred when bus drivers refused to drive buses which violated requirements of Vehicle and Traffic Law was supported by substantial evidence, including evidence that union was responsible for job action, job action was timed to occur immediately following expiration of interim impasse arrangement and only violations posing no imminent danger to safety of public or drivers were involved in charge. McKinney's Civil Service Law § 209; McKinney's Vehicle and Traffic Law § 100 et seq.

¹²⁵⁴ Martin L. Barr and Anthony Cagliostro, Albany, for appellant.

Mary P. Bass and Lester G. Freundlich, New York City, for intervenor-appellant.

¹²⁵⁵ Amy Gladstein and Walter M. Meginniss, Jr., Brooklyn, for respondent.

¹²⁵⁶ Marc Silverman, Ruth Raisfeld and Laura Jacobs, New York City, for "Straphangers Campaign," amicus curiae.

LOCAL 252, TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO, Respondent,
58 N.Y.2d 360

Cite as 46

OPINION OF THE COURT

JONES, Judge.

The Public Employment Relations Board is not precluded from determining the propriety of a concerted refusal of bus drivers to perform their duties in the normal manner for the purpose of securing job-related demands. It is not a strike in violation of the Taylor Law although the normal manner of performance would entail violations of the Vehicle and Traffic Law where citation to violations is only a pretext. In this instance the record contains substantial evidence to sustain such determination by the board.

Local 252 of the Transport Workers Union of America, AFL-CIO, is the certified bargaining representative for a negotiating unit of some 640 public employees of Metropolitan Suburban Bus Authority. Approximately 460 of these employees, a group which is the subject of the illegal strike charge, are bus drivers in Nassau County. The authority's surface transportation system which serves areas in Nassau County.

The authority and the union were unable to reach agreement on a contract for the calendar year 1979, the prior agreement having expired on December 31, 1978. As a result, the unit members were working under terms and conditions imposed by the authority pursuant to the impasse procedures of section 209 of the Civil Service Law. In November of 1979, the union and the authority began negotiations for a bargaining agreement to take effect in 1980.

Sometime in November, the president of the union instructed the bus drivers to attend "safety classes" that they did not have to operate buses which violated the requirements of the Vehicle and Traffic Law. I told them that the union would back them up if they refused to drive buses with violations but that any bus which was in compliance with provisions of law was to be driven.

At a negotiating meeting in December 1979, the union president warned the authority that there would be "big trouble" if the parties did not agree on a contract by